



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

JK

21

G8

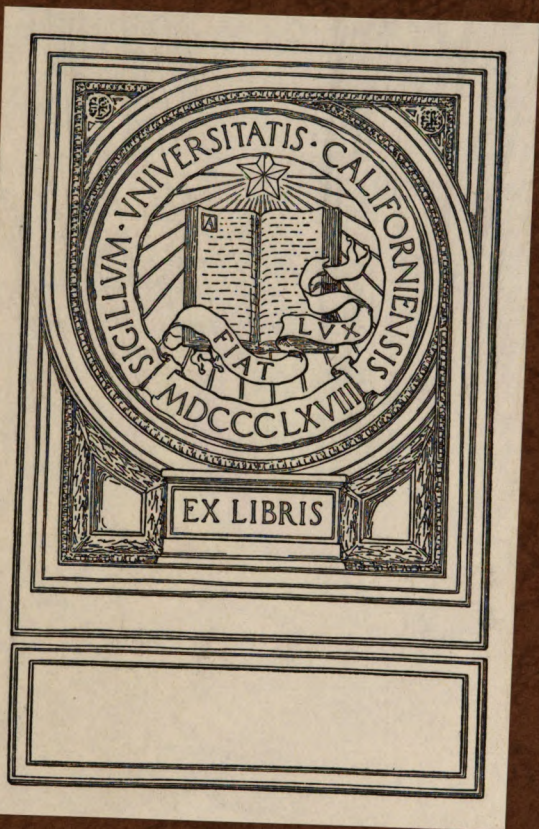
UC-NRLF



⌘B 22 469



YC 09008



SOME OF THE DIFFICULTIES

IN THE

ADMINISTRATION OF A FREE GOVERNMENT:

A

DISCOURSE,

PRONOUNCED BEFORE THE

RHODE ISLAND ALPHA

UNIV. OF
CALIFORNIA

PHI BETA KAPPA SOCIETY,

JULY 8, 1851.

BY WILLIAM GREENE.

PUBLISHED BY REQUEST.

PROVIDENCE:
JOHN F. MOORE, PRINTER.
1851.

FRED LOCKLEY
RARE WESTERN BOOKS
4227 S. E. Stark St.
PORTLAND, ORE.

JK21

G8

NO. 1111
ALABAMA

22R

UNIV. OF
CALIFORNIA

DISCOURSE.

THE problem of a wise constitution, is of much easier solution, than that of a wise administration of government. A constitution of government, is but a generalization of principles, deduced by philosophy from an experience actually realized. An administration of government, on the other hand, is an application of principles to a new experience constantly arising. The one may be said to have an ascertained certainty in the test of the past. The other must remain uncertain until determined by the test of the future. The difference is, between that which is *suggested* by events, and is a deduction *from* them, and that which *meets or anticipates* events, and is to be judged *by* them. Hence the one is comparatively permanent—standing on great principles, which rarely change; while the other is fluctuating—perpetually subject to outward influences, which are never settled. The grand inference and lesson from all this, is, that the difficulties in government are not, or at least, not so much, in its organic structure, as in the practical carrying out of the principles prescribed by that structure, in the administration of affairs.

M35386

Whatever may be the form of a government, its administration must be reflected mainly from the character of the people who are the subjects of it. Hence it is quite as important that the public mind should be rightly informed upon great general principles, as that there should be the right sort of rulers to apply them. In popular systems, especially—such as our own, for instance—there are problems of a disturbing influence constantly arising from the very freedom upon which such systems are founded; and the free discussion of which in a popular form, is indispensable to their proper appreciation by the masses. Such discussion is particularly well for a people, who, in high success, are so engaged in the *concrete*, as to overlook, ordinarily the *abstract* of things; and who by not habitually consulting principles must be liable to all the evils of a want of them. Such discussion is farther recommended by the fact, that a sound administration of a government, can never be assured by mere events. The right and the wrong of politics strike deeper than the surface of affairs; and though great prosperity may stand up, from day to day, in commendation of a system of administrative policy, there may be hostile influences working underneath, which may upheave all that is worth having, in the foundation on which all rests.

On the present occasion, I propose to discuss some of the problems referred to, as suggested by the experience of our own political history, and as particularly applicable to our own political and social condition. The topics, to which, under this general announcement, I would invite particular attention, I shall class under

three heads: First, inequalities of individual power, which exist among a people, notwithstanding their equality of political rights: Second, the fundamental relations of sovereignty, on the one hand, and of representative responsibility on the other, which exist, reciprocally, between the people and their appointed ministers of power; and, Third, some particulars connected with the action of political parties. These topics present difficulties which would seem inherent, and therefore unavoidable, in every free system of government; and hence I shall discuss them, not for the purpose of suggesting or discovering radical correctives of them, but for the more practical purpose of modifying their tendencies by an attempt at least to understand them: for by comprehending an evil, though we may not entirely remove or overcome it, we may diminish its power for mischief, by enabling ourselves, to some extent, to be on our guard against its influences.

1. First then of inequalities of individual power; and these appear, mainly, in three forms; talent, education, and wealth. All these forms of inequality of individual power, are, in greater or less degrees, and in certain bearings, the occasions of jealousy affecting the well-being of the state. But between the first two and the last, there is this radical distinction: The jealousies awakened by superior talent and education, are mainly between individuals of similar ambition and having similar pursuits and aims. The jealousies excited by superior wealth, on the other hand, go beyond individuals and extend to classes. The effects of the

first upon the State, are comparatively remote and incidental, as they merely affect the character or career of rivals for political power or place. The effects of the last are direct and instant upon the State, as they are connected with discriminations directly predicated of the pursuits and interests of the whole people of it. The jealousies, again, between rival individuals, are comparatively temporary; for they must cease with the lives of the parties to them. Those between classes may have any length of permanency; for individual life gives no necessary measure of their duration. Of talent and education it may be further said, that they are regarded with respect rather than jealousy by the masses, as giving distinction to the national character, in which every man, however humble, feels instinctively that he is a sharer; and however deficient of either he may be himself, he claims a portion of the power and glory, associated with the possession of them by others. Besides; talent and education are intangible,—metaphysical possessions, if you please—and beyond any man's conscious power of grasping at his pleasure; and no man ever dreams of conflict for a thing which he knows to be beyond his reach. Not so of wealth; for that is a physical affair—a thing which admits of divisibility and distribution; and when large estates are accumulated in few hands, the fact that, by physical possibility, such an advantage is within every one's reach, awakens a feeling that there is something wrong in the system of things which admits of such superiority in some over others; and a fancied unfairness, suggests, at once, the correction of such inequality

as an evil. It is to the last of these forms of inequality of individual power, because of its more prominent connection with the well being of the state, that I would invite particular attention.

On this point, then, I would say, that the feeling of hostility, too often indulged by the poorer against the richer classes, as such, is at once, unphilosophical and unjust. It is unphilosophical, because it attacks a condition which is inevitable. It is unjust, because that condition being inevitable, the class attacked, exists in conformity with a state of things, ordained by a power higher than their own, and which for that reason, if there be a wrong, can involve no fault of theirs. This would seem to be one of those propositions which are so evident as to preclude all reasoning; and yet, there are those, and of a high class too, who maintain the opposite opinion, seemingly as demonstrable truth; and who insist, that inequality of wealth is a wrong, full of oppression and injustice, and calling for correction as an affair of state. Such persons, it appears to me, commit the too common error of making a particular fact the expression of a general truth. That misery is often associated with poverty, no body will deny. This is a particular fact. But that happiness or misery may depend upon conditions, altogether independent of wealth or poverty, every body must admit; and this is a general truth. Now the error referred to, arises from wrongly ascribing the miseries often attending poverty, as necessary to the condition of poverty itself, rather than to a wrong state of mind too often found in association with it. The first, pov-

erty, may be unavoidable. But the last, the state of mind, must be considered as within every individual's own proper control. The first, because unavoidable in a given case, may be without fault. The last, because within a control which is not exercised, is attended by a misery which is the appointed punishment of a moral wrong. The true proposition then, would seem to be, not that misery is a necessary concomitant of poverty, but that some poor men are miserable;—and being poor, are apt to ascribe only to their poverty, the misery which may mainly be traced to something foreign to and independent of it.

The whole philosophy of this matter I apprehend to lie in this: The principle of inequality pervades all nature, inanimate as well as animate. We have it in the varieties of hill and plain which characterize the surface of the earth; in the differences of soil, whether barren or fertile; in the trees of the forest; in the plants of the garden; in the fruits of the fields, and in the cattle that range upon the hills. Inequalities in all these meet us at every turn; and are evidently as necessary in the constitution of things, as the distinctive character which belongs to every individual existence of them. So with inequalities of human condition, and the power that is incident to it. They are as certain and as necessary as that humanity is not a unit. As far as creative power has given a distinctive consciousness to every individual life, it has given a capacity of distinct individual action and of distinct individual result. And the varieties of this result must be coextensive with the number of the human family, who are the subjects

of them. These varieties, in their character and extent, must depend upon each individual's degree of power, and the manner of using it; and this, whether this degree of power be originally given, or acquired by culture: whether it be the endowment of birth, or the acquisition of individual merit.

From all this, it would seem but mere justice, that what is mine cannot be anothers without my volition, because my capacity, and not anothers, has produced it. But it is not merely just. It is in the order of Providence that it shall be so. This order of Providence involves a higher notion than mere justice. It refers the principle of right to the power that ordained it, and not to the individual who is the accidental instrument of giving it effect. The *want* of certain things, which, in a particular application, is called poverty, is, so far as we know, as clearly ordained in the relations of human affairs, as is the *possession* of certain things, which, in a particular application, is called wealth. This is evident from the simple fact, that poverty, as well as wealth, exists; and nothing can be assumed touching the Providential design of either, which would not apply equally to both; for our knowledge, in kind and degree, is exactly the same in the one as in the other. Now the man of wealth is the minister of God for the particular end which is his destiny. So is the poorer man equally a minister in another form of action. The question which is the more blessed in his particular allotment, whether to wealth or poverty, is altogether independent of the mode of ministry; and depends upon the faithfulness with which

the duties belonging to the one or the other may be fulfilled. Hence the happiness which a rational being should be desirous of, refers, not to the external condition, but to the inward sentiment which should determine and control it; and this is as independent of wealth as it is of station, or any other relation which is purely external to the man.

But again: the inequalities or diversities of human power, in whatever form, in themselves and their results, are obviously, as wise for human good, as we have seen them to be necessary in the essential constitution of things. The great aggregate of human life, as expressed in community associations, is made up of an infinite variety of adaptations and pursuits; every one of which is necessary to a perfect whole, and no one of which could be omitted without injury to each individual of which a community may be composed. We must have our farmers and our merchants; our men to till the soil as well as our men to distribute the products of it; our landsmen and our seamen; our captains to command our ships as well as our men before the mast to work them; and so through all the gradations of human life from the highest to the lowest forms of human power. All these diversities in the application of this power to things necessary to be done, in order to a general prosperity of the whole human family, are equally illustrations of the divine wisdom in the ordering of human life; and equally the occasions of honorable distinction, as the individual duties involved in them may be rightly and honorably performed. The result of this reasoning is, that if it were practicable to

overcome the inequalities or diversities of human power, it would not be desirable.

There are two practical views of this matter which I would present before I dismiss it. The first is, that the principle of dependence, as between the rich and the poor, is just as predicable of the one class as of the other. If the wealth of the rich, by its rewards to labor, be necessary to the support of the poor, the labor of the poor is just as necessary to the existence and well being of the rich. The idea of compensation is mutual; and the rendering of it by the one and the other, differs not in the principle but only in the form. Any distinction touching the abstract respectability of the form, is purely factitious. Or, if there be any real moral difference between the two classes in this respect, the advantage would seem to be on the side of the poor—for it is certain that labor is always entitled to its reward; whereas it is not certain that wealth is always entitled to the benefits, bestowed by the labor which sustains it. This is a point altogether independent of individual happiness, and must depend upon the manner in which wealth is used; and this presents an issue with which no one but the individual immediately interested, has any thing to do;—an issue to be decided by a tribunal, to which all alike must render an account, altogether independent of human conventions and opinions.

The second practical view I would present, addresses itself to a selfish feeling, but is, still, cognizable by enlightened judgment; and is this: that the hostility which the poor man may feel or manifest towards the

rich one, might, in time, react upon himself; for the poor man of to-day may be the rich man of to-morrow; and it may be well for him to take heed, lest in the complaints he makes of a present disparity between his condition and that of his richer neighbor, he be forging a weapon for future use against himself. There are those who started with him, but whom he has outstripped in the race of fortune; and these will not be likely to forget his former companionship with themselves. And the *argumentum ad hominem* attack upon his new position, would not be quite agreeable, when the effect of it would be, to show him, on his own principles, to stand in that new position, in a false and unjustifiable relation to those around him. To be sure, the instances may be comparatively few, in which such a state of things would occur. But the right to enjoy it—the only true right of equality by the way—presumes that every man may reach it; and this is all that is necessary to the argument. He who does not, in point of fact, reach it, wants either the worth or the power to reach it; and, has no right to complain; for, as already seen, every man is individual; and, abstractly speaking, must trust his success in life to his own powers and not to anothers, except so far as such other may choose to give him aid. The conclusion of the whole matter would seem to be, that the rich man is rich, because, in an unavoidable course of things, circumstances have made him so; and the poor man is poor, for the same reason; and that as neither the one nor the other can control the principle, by which these circumstances have produced certain results rather

than others, in disparities of individual fortune, each should fulfil the duties of his particular allotment, without jealousy, opposition, or interference as respects the other.

II. From the fundamental relations of sovereignty on the one hand, and representative responsibility on the other, existing, reciprocally, between the people and their appointed ministers of power, (which was the second topic I proposed to discuss,) two difficulties arise. The first refers to the tendency of power in rulers to undue enlargement; and suggests the problem of the true limit of power. The second refers to the tendency of conscious sovereignty in the people to an undue control of their chosen Representatives; and this suggests the problem of Representative instruction. On both these problems, there has long prevailed a diversity of opinion; and, on several occasions in our own history, with bearings eminently important to the practical operations of our own government.

1. As to the first of these problems, I shall discuss it with the view, if possible, of discovering some definite ruling principle that shall solve it. And this, I apprehend, may be found in the proper definitions of sovereignty and power, as contradistinguished from each other.—These terms are most often used as meaning the same thing—as conveying the same idea. Whereas, in the strict political application of them, they are as different from each other as the fountain and the stream which flows from it—or as cause and effect. This, I apprehend, will appear from investigation.

Sovereignty, then, is an *absolute* idea, existing in the

nature of things. It is a pure abstraction and cannot be annihilated without annihilating the body in which it exists. It is predicable of a single individual, or of a community of individuals. As, for instance, if there were but one man on the face of the earth, it would be predicable of him. If there be a community of a thousand individuals it is predicable of such community; and for the same reason; for in a community, each individual is, politically, an expression of the whole body; and the whole body an expression of each individual. This sovereignty is a unit, and therefore indivisible. This would certainly be true of a single man; and for the reason just given, must be equally true of a community. It is also inalienable; for in the case of a single man, it is a portion of his very being; and he could no more part with it, than he could part with his power of breathing, and yet live. So also of a community: it is the essential principle of its compact; and it could no more part with it than it could part with its power of cohesion, and yet remain a compact body.

Now, if sovereignty be indivisible, because a unit, and inalienable, because adhering, intrinsically, to the body in which it exists, can it be delegated? If it can be delegated, it must be to something without the body in which it exists, which is inconsistent with the idea that it can exist only within that body. But if it cannot be delegated, how shall it be exercised? clearly by emanations from itself, rather than by itself. And here arises the idea of power as contradistinguished from sovereignty. The sovereignty must create a

This whole argument about Sovereignty I consider faulty. It is a property that can be parted with, in whole or in part. Else the unit man-sovereign could not make the sum men-sovereign. God only is a Sovereign at liberty. Man, under His leave, affects sovereignty as far as his will goes can retain or part with all or part of it. His own act only binds him, but the day does bind

magistracy with special orders and powers to do the work of government. These powers to a magistracy, may be of a greater or less extent; may comprehend all that could be conceived as applicable to the details of government, or only a part, as experience may suggest the utility of certain limitations in their grants. If only a part of these powers be given, then the capacity of further emanation which the sovereignty retains, remains, so far, in the body in which it exists, in a state of dormancy or inaction; to be given out or not, in future emanations, as occasion may require.

If these principles be true, a distinction clearly exists between the sovereignty from which power emanates, and the power itself which emanates from it. The former exists in the community; the latter in the magistracy created by it. Hence, they are not convertible terms; and though sovereignty, as the superior, implies power, power, as the inferior, does not imply sovereignty. The one gives, and the other is given by it; and what is not given of the last, is a residuum in the first. Hence the magistracy in which the power is placed, has its measure of that power, in the constitution or commission which certifies the grant; and in the exercise of power beyond the grant, the magistracy usurps upon the residuum which the sovereignty has thought proper to retain.

These views are equally applicable to all forms of government, whether despotic or free—whether monarchical, aristocratic or republican. For the only difference in the different forms of government, is—

not in the essential character of the magistracy, as created or affected by the grant of power itself; but only in the greater or less amount of power granted. The sovereignty does not the less exist, that it may have granted *all* power to the magistracy. It is, in such case, the same sovereignty that it would have been, had it granted only a part, or indeed none at all. This is evident from the fact that it may, at any time it pleases, revoke *all* power as well as it may a *part*, by an entire change in the frame of the government; which it could not do, if it ceased to exist as a sovereignty, by the very act of granting all its power.

From all this reasoning, the distinction results, between the delegation of *sovereignty* which is impossible, and the delegation of *power* which is possible. It also results that the term *sovereign* can never be properly applied to a magistrate, whatever may be the tenure of his office, or however absolute or restricted in his power—whether he be a Russian Autocrat or an American President. The first, is absolute in his power, because the sovereignty has made him so; not because he himself is sovereign. The last, is restricted in his power, for the same reason. And the difference between the absolute power granted in the one case, and the restricted power granted in the other, is simply and only the difference between despotic and free Institutions.

The practical application of these principles to our American government, as established by the constitution, is all important; for it would seem to settle the question as to the character of that constitution, in

especial connection with the Executive Department,* whether it be an *enabling* or a *restraining* instrument. Hamilton, in his vindication of Washington's proclamation of neutrality, and Jackson, in his paper to his Cabinet, connected with the removal of the Deposits, in effect, maintain, that our constitution, in regard to Executive power, is only a *restraining* instrument: that is: that all which is not forbidden may be done. For the act, in each case, is distinctly placed upon the ground of inherent power in the Executive, independently of specific constitutional grant.† Now, if this doctrine be true, in its application to the particular cases referred to, it must be equally true of all other cases, which may come within the definition of Executive power in the *abstract*; whether power in such other cases be given by the constitution or not. The effect of this, in all matters in which he is not expressly restrained, would be, to invest an American President with the absolutism which belongs to a Turkish Sultan.‡

* I say, "in especial connection with the Executive Department;" for it is observable, that the Constitution, in reference to the *Legislative* Department, speaks of "all legislative powers *herein granted*;" whereas, in reference to the Executive Department, no restrictive terms are used. Hence, it is to the latter Department alone, that the remarks in the text are intended to apply. The Constitution prescribes the "true limit of power," in the one case; my remarks are designed to suggest the rule, to ascertain that limit in the other.

† It must be observed, here, in relation to the Proclamation of neutrality, that my objection is, not to the act itself, but only to one of the grounds upon which it was vindicated by Hamilton. The act itself was undoubtedly a very proper, as well as constitutional one. It was not an exercise of power, *creating* a new state of things; but, simply, a declaration of the Executive opinion, as to a state of things *already existing*; of which opinion it was right that the people should be informed. Every one must see the difference, in this respect, between the proclamation of neutrality, and the removal of the Deposits.

‡ The question of express and implied powers, so much mooted, it is clear, has nothing to do with this investigation; for powers may be granted by implication as well as in express terms; and the question, whether an implied power be granted or not, in a given case, must depend upon, and be decided by, principles, altogether foreign to this discussion.

2. The problem of representative instruction, the second topic under my second general head, may be discussed in two aspects: the one, referring to the proposition of abstract right in a local constituency, to control the action of the representative by express command: the other referring to a supposed predominating public sentiment, which is regarded by many as entitled to all the authority of an express command. In regard to the first of these aspects, I will present but two thoughts: and the first is, that the theory of all sound government, presumes the wisest and fittest men to be selected for the administration of its powers. And hence, the admission of the right of authoritative instruction in the constituency, would seem to involve the further admission that ignorance shall be of higher authority than intelligence in the conduct of political affairs. To be sure the theory suggested of electing the best men is not always carried out in practice. This fact, however, no farther affects the principle, than as it shows how it may sometimes be abused. The theory must remain the same, whatever mistakes may be made in the action under it. If bad and ignorant men are elected to perform the duties, which only the wisest and the best men are qualified and intended to perform, it only shows how a wrong judgement in a constituency may pervert a power to evil which was properly designed for good. It may also show how, in a particular case, extraordinary means may be necessary to correct a casual mistake. But it certainly does not prove the abstract proposition, that representative instruction is a necessary element of free government;

and this is alone the point we are discussing. The theory of election properly carried out, would render instruction unnecessary; for in fair presumption, the government would be rightly administered without it. If it be not carried out, the resulting evils are the appropriate punishment of an abuse of the high power of suffrage. The theory itself cannot be changed without reversing the order of things:—without indeed assuming that men are to be elected with the express view to their being instructed, and not because their qualifications place them beyond the necessity of it. In such case, the weak should be placed in power instead of the strong; the foolish instead of the wise; for of none but these could the doctrine be profitably predicated; and these, it is admitted, could not get along without it. But it is only these that would require it, or to whom it could consistently be applied.

The second thought referred to is, that government is a unit; and, being so, the true idea of the representative system, is, not so much that each part is represented, as that the whole is represented by the representation from each part. This appears from the fact, that the laws enacted by the whole body of representatives, are for each part as well as for the whole; and hence, the representation from each part is as much the representation of every other part as it is of its own. Nor can there be any difference in this respect between general and local legislation. For a law of our general government, for instance, specifically applicable to a particular local district of Louisiana, involves the action of the representation from each

district in Rhode Island, as much as it does the representation from the district in Louisiana. And hence, in regard to that particular law, the representation from the district in Rhode Island, is as exactly the representation of the district in Louisiana, as the representation from that district itself would be. And hence again, if the doctrine of representative instruction be true of the immediate constituency of Louisiana, it must be equally true of the constituency of a district in Rhode Island ; and the constituency in Louisiana may instruct the representation from Rhode Island as well as its own. And, further still : the constituency of Rhode Island may instruct the representation from Louisiana, against the very measure, which the constituency of the latter State may especially desire. Now this would be carrying the doctrine further than is claimed ; and thus, by consequentially involving too much, it is entitled to nothing, and must fall to the ground.

The doctrine of instruction, in the aspect in which I am now discussing it, appears to me to originate in a confusion of ideas. It confounds the idea of a political government, instituted for permanency, having certain prescribed powers, which, in the very nature of them, can be revoked only by a change in the organism which creates them, with the idea of a mere business agency between individuals, in its very nature temporary, and the powers of which, may be, at any moment revoked, by the single word of the Principal who grants them. In the first, the powers created, are beyond the reach of instruction ; because, to be so, is a necessary condi-

tion to the complete authority of the government which possesses them:—whereas, in the last, the powers conferred are constantly within instruction, because, in the very nature of them, it cannot be absolutely necessary that they should be beyond it. Government then is not a mere agent. It is, for the time being, the principal; the embodiment of the people that created it; the *people themselves*, in a concentrated form. Not so the relation between two individuals—the one giving, and the other receiving, a commission for the performance of some particular service. In the last case, there are two parties; and the one may, by superior relation, instruct and control the other. In the first, there is, in fact, but one party; which can be instructed only by itself; and be restrained in its exercise of power, only by the specific rules laid down in the organism which created it.

The second aspect in which I would discuss the doctrine of instruction, refers to a supposed predominant public sentiment for which is claimed all the authority of express command. Now, public sentiment may express itself as loudly and as strongly as it pleases, through the press, at the hustings, and by the instrumentality of popular resolutions. But it can *act*, without revolution, only through organic forms of its own previous creation. The wisdom of these forms, indeed, is proved by nothing so much, as that through their instrumentality, useful changes may be made with any frequency and in any number, without violence.—These forms ascertain with certainty, that the public sentiment in question, is a reality and not a sham.

The rule of addition gives an unerring result in the comparative numerical force of the ayes and noes of the ballot box. And he who maintains the ascertainment of an authoritative public sentiment in any other way, in effect maintains the political absurdity, that a minority may, of right, overrule a majority in government; for it is only through the instrumentality of the ballot box that the side on which the majority exists can be certainly ascertained. *fraud & bribes excepted,*

Public sentiment, however overwhelming, cannot enact law. It can, at the most, only express the tone with which the powers of government should be administered, in the opinion of those by whom that sentiment is entertained. Whether or not it be entitled to authoritative influence in the administration of the government, the ministers of power for the time being, must, upon their proper responsibility, be the sole judges. If, perchance, the law making power enact a law in opposition to the public sentiment, there are two ways of meeting the difficulty: first, by direct resistance to the law; and, second, by patiently awaiting its repeal, by the election to power of a new and more faithful set of men. The first is rebellion; which, in resisting one law, violates all; and thus breaks up the government. The second, in due time, breaks up the law and maintains the government. The first, in correcting one evil, perpetrates a thousand others. The second, by correcting an evil, does a good and nothing more. The first, is anarchy, with a liability to all the desolating mischiefs that pertain to it. The second, is the every day experience of the best systems

of government, and nobody is disturbed. The government itself, remains sacred as it was. 1

III. The third and last general topic I proposed to discuss, is, some particulars in the action of political parties. It is quite too late to discuss the question of the necessity of political parties in a free State. The whole problem on this subject is solved by the simple fact, that opposing parties are the necessary result of perfect freedom of individual opinion; and the right, by association of numbers of similar ways of thinking, to propose and vindicate such measures of policy as that opinion may designate to be wise and just, is as indispensable to freedom as the right of opinion itself is. As individual opinions vary, so opposition must arise in the expression of them, and in the action upon them. And in this opposition, each party must be assumed to be equally honest and patriotic with every other; and neither can properly be put down, by alleged dishonesty in the motives that may be supposed to actuate it. The question of parties then in a free government, should be, not whether they shall exist, or whether their rights shall be respected; but rather how the spirit of them shall be directed and controlled, in its bearing upon the welfare of the State. Whether this spirit shall be upright or the reverse, is, certainly, a matter vital to the character of the community, whose very freedom, as has been seen, originates and justifies it. But, on this point, no rule can be given for the security of uprightness in the conduct of rival parties, that is not equally applicable to the maintenance of virtuous conduct in the affairs of individual

life. In the first, as in the last, there are all the liabilities of moral evil; for in both, there is the necessary exposure to the influence of human passions. The most that can be said, then, of political parties, touching the question of their existence, is, that their incidental evils must be borne for the sake of the good which could not exist without them; instead of being made the ground of denunciation to the system, which the necessity of human infirmity compels to tolerate them.

Generally speaking, the leading parties in a state are only two—the one supporting, and the other opposing, the existing system of administrative policy. And however much the members of these two parties, respectively, may differ among themselves, upon subordinate matters not vital to their general aims, the integrity or unity of their organization is rarely broken; for they agree in the one grand rallying point, of support or opposition to the existing government. Such a division, standing as it does upon the mere discrimination between those in, and those out of power, would seem natural and convenient. But this convenient arrangement is now and then disturbed in the operations of a government, by the creation of a third party with particular views, in which, in their detached action, they have no sympathy with either, and are equally opposed to both the other two. And here a complexity arises in the course of party action, of so much importance to the general welfare, as to give it a particular prominence, and to entitle it to a special consideration in an investigation of the philosophy of

parties. This complexity I propose to discuss; and in what I shall suggest concerning it, I shall speak of the origin, the main source of power, and the influences most likely to control the action, of third parties. And first of their origin.

1. There is a class of men in the world, who, however upright, are never satisfied with any present state of things, however comparatively good; and who, in a state of unrest in relation to some matter of present absorbing interest, have a feverish desire of instant realization. They are not willing to regard the highest attainments of humanity as things of progress; but they would have them all at once; and the judicious patience, which awaits the natural growth of things, step by step, is not theirs. Their condition would seem to be, one of complaint at what they have not, rather than of thankfulness for what they have. In their exclusive thought of an ideal, they overlook the actual which is indispensable to enable them to reach it. And thus their world is made one of imagination rather than of fact—of desire rather than of acquisition. Such minds are characterised by particular views which terminate in themselves, rather than by general aims, to which these views, to be valuable and useful, should be subordinate. Hence, they make ends of what should perhaps be only means; and are apt to lose sight of a general purpose, however important, in their exclusive devotion to what should be regarded only as a particular step in the attainment of it. Such minds rarely do much good for the whole of a thing. Rather the reverse; for their

influence is to impair the force or lessen the estimation of a great general purpose, by the disproportionate attention bestowed upon only a part, and perhaps a very *small* part, of it. Of relations that pertain to ordinary life, the benevolence which should embrace them all, as parts of one great whole, is dwarfed by its devotion to some single part, as though that were the whole. Of matters connected with the movements of a government, the patriotism which should range over them all, in their due proportions, is narrowed down to some single particular, as though the compassing of that, comprehended all that belonged to the great aggregate of patriotic duty. I do not and cannot impeach the integrity of the class of men of which I speak; for their error, as I conceive it to be, consists, generally, not in designing too little, but too much, for human good:—in attempting to do, not what *should* not, but what *cannot*, be done; and thus in *wasting* power, with indiscriminating judgment, rather than *abusing* it, with an unworthy purpose.

Now, if I do not greatly mistake, third political parties are mainly recruited from the class of men of which I have been speaking. Not, because, the various individuals composing the class, have, necessarily, anything in common in their purposes; but because their purposes are directed by the same common principles of character, viz; the desire of instant change from a present state of things, to an imagined better, and the devotion to one idea of a great general subject, to the exclusion of all others.

2. A. third party, thus formed, derives its power in a

community, mainly from a cabalistic word—reform—Honest credulity is easily attracted by the sound of that word. In itself, and in its ordinary signification, it expresses an idea of inappreciable value; but frequently, in its cabalistic application, it means anything but good. In its practical uses in the history of governments, it means quite as often to upheave and overturn as to improve and make better. The first movers in reforms, however innocently, often mistake change for improvement. They think that something must be better than the present, because, as every body knows, the present is not perfect; and that something, they think they have discovered. They overlook the fact, however, that the principle of imperfection which never ceases, must equally attach to this new something which they would reach; and that thus, the principle of reform, as they apply it, resolves itself into an infinite series of experiments; the effect of which must be, to keep up perpetual agitation with perpetual disappointment in the objects of it.

But there is such a thing as true reform—and as I apprehend it, it is gradual improvement; not sudden change. The first, adapts itself to circumstances; and by seeming to submit to them, really controls them; and thus is aided by them, in a natural and certain growth. The last quarrels with circumstances; and thus creates a hostile influence, which must meet it at every turn, and perpetually war against it, and, in most instances, defeat it. In political communities, all true and permanent reform must stand, ultimately, upon the convictions of the masses that compose them.

These convictions are necessarily of slow growth: for the public mind reasons by events rather than by principles. Affairs affect and influence communities by action and not by contemplation. The wisdom of a given measure, is ascertained at once to the Philosopher by the force of reason. To the masses, that wisdom can be learned only by actual experience. If a dark and overshadowing evil pervade the land, in the form of some deep and fundamental error in its political condition, no human power, however great, can exterminate it in a day; or would be wise in attempting it. But, by a careful and judicious training of the public mind to new forms of thought and new modes of action:—by the application, from day to day, of principles which everybody can understand and nobody deny, long years can hardly fail to establish the right, which gifted minds would desire to make prevail at once, but which all history proves, can never be fully and profitably realized by the masses, but in the lapse of time.

3. The number of a third party, originating as we have supposed it to do, is rarely large compared with the whole population of a State. Its existence at all, is but a form of eccentricity, the very definition of which imports merely a departure from the generally approved course of things, in which but a few are found to sympathize or take a part. The number being thus comparatively small, if their movements were left to the ordinary course of party action, their efforts would signify but little in results. But, there are two important influences liable to bear upon them, which, if unrestrained by some superior control, may make

their position not only significant but dangerous. The first of these influences is from without; the second, from within, themselves. The first refers to alliances with other party organizations than their own, which, though without a particle of sympathy with their principles, are yet ready to offer terms for their power. The second refers to an exaggerated rule of personal conscience, which places the individual in opposition to the State. Both these influences are worthy of particular remark.

As to the first then : In the history of the two great general parties, into which, as we have seen, a State is usually divided, each, in its struggle for predominance, is found to avail itself, without particular scruple, of adventitious aids. Of these, a third party, which, of itself, may be of but little account, may yet, as holding the balance of power, be of the largest importance, as a means of determining the question of power between the other two. Honest and conscientious as this third party may be supposed to be, and generally, in fact, is, the slightest hope of advantage to their peculiar theory, making them forgetful of other interests, must naturally predispose them to alliances, which shall be likely, in any form, to give that theory even an incidental prominence. Such alliances are easily brought about by the negotiations of leading and generally interested men ; and, under such pretexts, as to exclude the appearance of any compromise of principle. But whatever may be the particular results of such alliances, they cannot, in their general effects, be otherwise than harmful. If the third party,

by the force of such alliance, carry their point, a very small minority, against all fundamental ideas, has been made to exercise a power of state. If the party in alliance with them, succeed in establishing their predominance, they have done it upon bargain instead of principle. And on this point, I hold nothing to be clearer, than that it is better for a wrong measure to succeed upon right principles, than that a right measure should succeed upon wrong ones. Time, in the one case, will correct the error, which the spirit of truth will be sure to detect and expose. Whereas, in the other, the right can hardly hope for permanence, when sustained by means, perpetually at war with the principle of uprightness, on which, alone, it can be made, consistently, to stand.

The case of *misalliance*, here presented, cannot be redeemed of its offensive character by the apology of compromise. To be sure, compromise is often very proper, and sometimes indispensable, to the carrying on of government ; but it must always be predicated of the two leading parties in the state, and always refer to modifications of *measures*. Whereas, any compromise between one of these parties, and a third, can refer, generally, only to men. The compromise, in the one case, is simply a yielding up of something, that something may be accomplished, in the proper and necessary business of administrating the government ; and is regulated by the principle in every day use in this imperfect life, that, when we cannot get the whole of what we aim at, we take a part. In the other case, the compromise can have, ordinarily, no other

reference than to mere party power ; and is practically affected by a concession of higher or lower official place, to third party men, as the consideration of their support. In the one case, the men in power remain the same, notwithstanding the compromise ; and without any violation of the principle of suffrage ; whereas, in the other, new men are placed in power, whose principles are obnoxious to a large majority of the community, and of course in entire disregard of the principle of suffrage.

But the second of the influences I have mentioned, as liable to bear upon third party organizations, is, of far deeper moment than the first ; for it strikes at the very foundation of all government. It is this ; that the action of an exaggerated rule of personal conscience, may place the citizen in opposition to the State. Now, if it be right for any man to say, "I will not obey a law because it is unconstitutional ; or if it be constitutional, I will not obey it, because it interferes with a higher law of my own mind ;" (and such is the language ascribed to Dr. Palfrey—a gentleman for whom I entertain a most sincere respect) ; I say, if it be right for a citizen to advance and to act upon such a proposition, let it be commended to the world, and that, too, by scholars, as a definite and well ascertained truth in political philosophy. On the contrary, if the proposition be false, let its pretensions be examined and exposed ; and that, too, with a freedom and decision, proportioned to the high places in which it has been uttered, and to the character of the distinguished names, by which it has been endorsed.

For one I believe the proposition to be false. Carried out, I believe it to be full of uncalculated and uncalculable mischief. It would destroy government, by the very means it proposes to sustain it. It suggests anarchy as a cure for bad legislation—a wisdom of the sort of that which would kill off the whole human race to get rid of sin.

The proposition, as I apprehend it, suggests an altogether erroneous view of true civil liberty, as connected with the rights of individual conscience. Civil liberty, if I mistake not, in contradistinction to natural liberty, is purely a conventional arrangement—absolutely necessary, to be sure, to the existence of society—but still conventional. It is that portion of natural liberty which is left to the individual, beyond the restraints imposed by the social compact, or the constitution, if there be one, and the laws constitutionally ascertained to exist under it.* Now civil liberty, in this view, supposes two parties: the State, or the aggregate of individuals composing it, on the one hand; and each individual, in his separate capacity, on the other. And between these two parties, there is a contract, importing a guaranty of protection on the part of the first, and a promise of loyalty, in consideration of that protec-

* I say, "the laws *constitutionally ascertained* to exist under it:" For there is a marked distinction between a law constitutional or unconstitutional, on the one hand, and a law constitutionally ascertained to exist, on the other—and this distinction is essential to the very being of a constitutional government. The transactions of every government, are necessarily clothed with certain forms for the expression of them. When a law has been enacted according to these forms, it must necessarily be treated as constitutional, [whether it, in fact, be so or not,] until, through other forms prescribed for the purpose, it shall be ascertained to be otherwise. To say that any individual citizen, however enlightened, and in however palpable a case, may treat a law as unconstitutional, *because he thinks it to be so*, would be equivalent to saying, that every citizen is at liberty to interpret every law, and to hold himself amenable to it or not, according to his own personal will and pleasure.

tion, on the part of the last. These are mutual covenants between the two, each binding upon the party making it; and conscience, in its largest sense, is the security that each shall be faithfully performed. Now, this obligation of loyalty in the citizen must, of course, apply to law in general; and so, doing, forestalls the conscience in every instance of a particular law. For to allow an individual at his pleasure, on whatever pretext, to discriminate between one law and another, in applying the principle of obedience, would be to absolve such individual from the obligation to obedience altogether—extending, as the power of discrimination would, to every other law, as well as to any particular one. For, it must not be overlooked, in the discussion of this “higher law” doctrine, that no rule defining the limits of its application, can be drawn from the particular character of the subjects of it; and that hence, if it be admissible as a principle of action upon one subject, its authority must be admitted as of equal force in all others. And thus every law of the State is brought within the operation of the doctrine; and the question of the obligation to obey, in the case of any given law, being submitted to the decision of every individual conscience, such law can have no binding force upon any individual whose conscience disapproves it. A most convenient state of things for the felon on the scaffold, who would plead exemption from the impending penalty of crime, that he had despoiled his neighbor of his goods on the philanthropic principle of an equal division of property, or had perpetrated a deliberate homicide for conscience sake. Now, if this ex-

treme application of the doctrine be inadmissible, (and who can believe it otherwise,) it must follow, the doctrine failing altogether, that the conscience, however opposed to a particular law, is bound to obey it, on the principle of a prior general pledge to obey it. Nor is there any thing in this that forces or constrains the conscience; for the case presented is a sort of dilemma, involving a comparison of duty, in which a decision must be made one way or the other; and in which the preference is awarded to what the judgment announces as the superior claim. I say, *to what the judgment announces as the superior claim*; for, though conscience be a distinct and separate faculty of the mind, there is nothing occult or mystical about it. It takes its counsels from the judgment, as do all the other faculties; and must be controlled by them. Conscience is a principle of the mind, not an instinct of the passions. It is a thing of culture, and has its government in the intellect: not a thing prior to intellect, standing out from it, and acting in spite of or independently of it. It is a principle of character, upon which the intellect works, and which the intellect informs and develops as it does other principles of character; and which, in its application to the conditions of imperfect human life, must deliberately submit to the modifications and judgments, which the intellect shall determine to be proper, in its general direction of human affairs. If, then, the obedience of which I have been speaking, be a proper suggestion of the reasoning powers, as connected with the necessary philosophy of government, and indispensable to its existence; and

x
 This may
 be disputed.
 A Christian,
 conscience is
 faith in
 obedience to
 God's law
 revealed to
 the mind,
 a perpetual
 in no sure to
 teach him
 of he will
 how to steer
 of a right

if no discrimination between one law and another can be made in the application of the principle, it follows that disloyalty or disobedience to a particular law, is a proper subject of condemnation to the conscience, however strongly the same conscience may condemn the law itself. The "higher law," then, which an individual may assume as commanding in him resistance to a particular law of the state, is simply the ordinance of an arbitrary personal will, which, in opposition to the wisdom of the government, sets up an individual wisdom of its own as superior to it.

Nor should it be overlooked, that there are two parties in this matter. There are those whose consciences approve a given law, as well as those whose consciences condemn it. And if those, whose consciences condemn the law, are morally absolved from the obligation to obey it, so those whose consciences approve the law, are morally bound by its authority; for the conscience would be equally binding in both cases.—And hence, we have two classes in the State, in respect to the authority of law: the one bound, and the other not bound by it—which is a political absurdity. The fact is, in the case of a law involving conscience, as in the case of one not involving it, the question must arise, (if the government is to be preserved,) which class shall rule; and the answer to this question, settles the whole matter. For the alternative of anarchy is just as sure to be presented by an issue of conscience, touching the morality of a law, as it would be by an issue of mere judgment, touching its expediency; and the decision of the question in either case, as

claimed by the higher law theory, must necessarily destroy the government; for in dispensing with the principle of obedience, no matter with what apology, when the power of government has given the rule, it must take away the only means by which the government can be preserved.

Two objections may be urged against this reasoning: the one, practical, to break its force; the other, abstract, to overthrow it altogether. The first assumes a distinction between actual resistance to a law, on the one hand, and simply refusing to aid in carrying it into effect, on the other. The second goes to the principle of revolution.

In respect to the first of these objections, I would say, that, as a practical affair, it may be well enough, as long as the aid referred to shall not be required. But when the cases arises, in which the law cannot be carried out without the aid of every citizen, the refusal of such aid when properly called for, would be equivalent to actual resistance. The same principle, which so far justifies the law, as that it may not be resisted by actual force, equally requires that it be positively supported, when the occasion is such, that, without such positive support, it would fail of being carried into effect. For the consequence would be the same in both cases—viz.: that of nullifying a law. So that the distinction referred to, in any substantial application of it, is without any admissable difference, in determining the course of individual duty to the state.

Nor can the recusant derive any advantage in this argument, from the suggestion, that he is ready to

suffer the penalty of recusancy; for that consideration presents an entirely different issue from the one we are discussing. The true question here is, not whether the nonperformance of a duty shall be punished, but whether a duty shall be performed. The last question is prior to the first, and entirely independent of it; and addresses itself to the ordinary sentiment of patriotic duty, and not to the extraordinary one of martyrdom. But further, if it would be right to disobey a law, because of something wrong in the law itself, it would be wrong to punish a citizen for his disobedience to it. And in such case, the punishment should be resisted as well as the law. The argument, then, from readiness to suffer the penalty, is purely gratuitous; and has nothing to do with the discussion. Should the principle of martyrdom however, still be urged, notwithstanding these views, it might be well to bear in mind as a matter of practical importance, that that great principle may be quite liable to be abused; and that the case might exist, in which, under all the views that might be taken of it, martyrdom for one good cause, might be at the expense of another equally good; and with even this difference in favor of the latter: that the first concerned the martyr alone; whereas the other would refer to the well being of the whole community besides. This would be a selfish martyrdom; and prove, not how much a man would suffer for the public good, but rather how far he could give license to his egotism or his vanity, under the influence of his zeal. A

proper case for martyrdom in politics,* would really be a proper case for revolution in the government. And in that application, the principle is as grand, as is the spirit of freedom, which on occasion, it might be required to vindicate.

But to the second objection: the right of revolution. This objection is liable to the same answer with the first. It does not belong to the issue we are discussing. For that issue does not propose a case in which a government is to be overturned, but only one in which a law of a government, intended to be continued, may or may not be resisted. Nobody denies the right of revolution from one system of government to another. If, however, a change of this kind occur, and a new system be substituted for the old one, the point we are discussing would be just as certain to arise under the new, as it has arisen under the old; for the same philosophy of government would belong as exactly to the one case as to the other.

*Revolutions
may be
impatiently
revolutionary*

What then is the result of this discussion, as to the true duty of a citizen in relation to an existing law, however odious to his feelings or wrong to his judgment? It is, unquestionably, to sustain the law while it

* I say "martyrdom in Politics," in contradistinction to Martyrdom in Religion. For, in the first, as has been seen, the necessities of civil government make the principle of obedience to law, absolutely sacred; and thus, in some sense and degree, subordinate the conscience to convention: Whereas, in the last, no such necessities exist, and the conscience may act to the full extent of its own requirements without reference to the principle of obedience. The distinction is, between what is absolutely indispensable to the very existence of civil government, on the one hand; and what may or may not form an element of it, but is, in no way, vitally essential to it, on the other. The one is predicated of a human relation between one man and a community of men, with whom for certain considerations, it has been necessary for him to make an unconditional promise of obedience: the other is predicated of an extra human relation, between each individual and his God, into which no other principle of duty can enter, but such as each individual conscience shall direct. Religious martyrdom, therefore, is admissible, whenever the conscience shall require it: Political martyrdom never, except when political oppression shall have determined a case for revolution.

exists ; and if needful to assist in carrying it out. He may condemn it, but not resist it, directly or indirectly. He may speak against it, and write against it, with all the freedom that belongs to the amplest discussion of a nation's policy of administration. But while the law remains upon the Statute Book, it must be sacred as a principle of duty. Until it be repealed as unwise, or set aside as invalid, by competent authority, in a case properly made, no individual judgment can gainsay its authority, without disloyalty—no individual conscience can resist it, without violating a superior duty to the State. In certain things the rule of necessity is as indispensable to political government, as it is to the economy of individual life—and one form of that rule is illustrated in what I have said.

My proper hour for this discourse is passed ; and I would not abuse a patience which has borne with me so kindly, and honored me so much. I have taken my topics mainly, from suggestions of our own history : and I trust that no apology is necessary for my having done so. My purpose, in part, has been, to discuss, in a plain way, some matters of moment that seem in our very midst ; and I have studiously labored to present these upon their own merits, without any extraneous aids, to give them an effect beyond the fair claim of argument. The times are quite too grave for a mere entertainment of the taste, on an occasion which admits of something that should be more profitable to them, in the discussion of high matters for the judgment. If, in what I have uttered, I shall have done nothing to relieve the doubts, which in certain

matters, now agitate the country, I think the spirit in which I have spoken will bear me witness, that I have not been forgetful of the country's interest and honor; and that in asserting what I believe to be the truth, in connection with these doubts, however delicate the problems in which they have had their birth, while I have not failed to suggest the honest thoughts of one American citizen, I have testified a true appreciation of the deference and respect due to those of every other.

RETURN TO DESK FROM WHICH BORROWED

R

RENEWALS ONLY—TEL. NO. 642-3405

**This book is due on the last date stamped below, or
on the date to which renewed.**

Renewed books are subject to immediate recall.

RECEIVED ED AUG 23 '69 - 3 PM

~~SEP 6 1969 06~~

J

~~REC'D LD NOV 14 '69 -5PM~~

AUG

3

LD 2:
(F7)

LD21A-60m-6,'69
(J9096s10)476-A-32

General Library
University of California
Berkeley

Gaylamount
Pamphlet
Binder
Gaylord Bros., Inc.
Stockton, Calif.
T. M. Reg. U. S. Pat. Off.

YC 09008

M35386

JK21

G8

THE UNIVERSITY OF CALIFORNIA LIBRARY

